IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER
Sharda Sales Corporation vs. State of Rajasthan & Anr.
(S.B.Civil Writ Petition No. 3299/06)

Dated:- 03, December, 2007.

HON'BLE MR.JUSTICE SANGEET LODHA

Mr.D.S.Rajvi, for the petitioner.
Mr B.L.Tiwari,Dy.Government Advocate.

BY THE COURT:-

The petitioner applied for a mining lease for excavation of the mineral ball clay red occur/yellow occur near village Jaisinghdesar, tehsil Nokha, district Bikaner. The mining lease was granted in favour of the petitioner for an area 129.5 hacters vide allotment letter dated 2.1.85(Annex.1). A lease agreement was executed between the petitioner and the Mining Department on 27.6.85 .

On a dispute having been arisen between the villagers of the area, the possession of the land was taken over by the Sub Divisional Magistrate(South), Bikaner in proceedings u/s 144/145 Cr.P.C. Aggrieved by the same, the petitioner preferred a writ petition no. 3851/93 before this Court. The writ petition was decided vide order dated 18th August, 2000 whereby the order passed by the S.D.M.(South) dated 12.7.93 and order dated 14.7.93 passed by the Naib Tehsildar were quashed and

set aside. The Secretary, Department of Mine was directed to appoint an officer to inquire if the petitioner has been carrying mining operation outside the leased area. It was further ordered that such report may be obtained after giving opportunity to all concerned including the petitioner. It was left open for the respondents to take an appropriate action in accordance with law if it is found that the petitioner has been working outside the leased area. Vide order dated 10.7.01 passed by the Director, Mines , the mining lease of the petitioner was ordered to be cancelled and the security amount was forfeited . In pursuance of the order dated 10.7.01 passed by the Director, Mines, on 18.7.01, the possession of the mine was taken from the petitioner by the Mining Department.

Aggrieved by the order dated 10.7.01, the petitioner preferred a revision petition u/s 30 of Mines and Mineral (Development and Regulation)Act, 1957 (in short "the MMDR Act" hereinafter)read with Rule 55 of Mineral Concession Rules, 1960 before the revisional authority. The revisional authority observed that before passing the order, the petitioner has not been afforded an opportunity of hearing , accordingly, the revision petition was allowed by the revisional authority vide order dated 2.4.04, order dated 10.7.01 was set aside and the matter was remanded back to the State Government for affording an opportunity of hearing to the petitioner in

accordance with law. Further,the petitioner was directed to clear all outstanding dues of the State Government saying that the possession of the area has remained with the petitioner. The State Government was directed to do the needful at the earliest but not later than 60 days from the date of issue of the said order.

It is stated that even after passing of the order aforesaid by the revisional authority , neither the possession was handed over to the petitioner nor any order was passed within the stipulated period after giving an opportunity of hearing to the petitioner. However, vide order dated 30.11.05(Annex.10), the petitioner was directed to deposit the dead rent a sum of Rs.2,24,099/- in 12 instalments. The petitioner deposited two instalments on 6.1.06 and 29.3.06.

The petitioner was granted the mining lease for the period of 20 years w.e.f. 11.10.85 to 11.10.05. The petitioner made various representations claiming therein that the period for which the possession was not with it should be excluded and the period of the lease should be extended accordingly without renewal. The petitioner also claimed that no dead rent be charged for the period the lease remained terminated and the physical possession of the leased area was not with the petitioner. The petitioner also made an application for renewal of the mining lease on 25.11.04.

At this stage, the petitioner preferred the present writ petition before this Court on 20.5.06 inter alia seeking directions against the respondents to hand over the possession of the mine , not to levy the dead rent for the period the possession of the leased area was not with the petitioner and to extend the period of the mining lease equal to the period the mining area did not remain in physical possession of the petitioner on account of the respondent taking the possession on 18.7.01, in pursuance of order dated 10.7.01.

It is stated by the learned counsel that notices were issued to the respondents by this Court on 11.7.06 and the same were served on 22.7.06. Instead of joining the issues raised in the writ petition in response to the notice issued by this Court, the respondent no.2 abusing the process of the Court proceeded to pass order dated 24.7.06, whereby the renewal application preferred by the petitioner was rejected.

The petitioner has challenged the validity of the said order by way of amendment of the writ petition.

The respondents have filed a reply to the writ petition wherein it is not disputed that in pursuance of cancellation order,the possession of the leased area was taken on 18.7.01 vide Annexure 7. It is stated that the order passed by the revisional authority was conditional and the petitioner was under an obligation to clear the entire arrear in terms of the said order

but, the petitioner has failed to discharge the liability even after demand being raised vide communication dated 6.4.05 (Annex.R/3) and therefore, the possession could not be handed over to the petitioner. It is further averred that since the petitioner failed to comply with the demand notice dated 6.5.05, therefore, vide communication dated 30.5.05 again the cancellation of the lease was recommended. It is also not disputed by the respondents that the petitioner made the representation seeking extension of the lease period and so also the exemption from payment of dead rent for the period it did not remain in physical possession of the leased area. It is stated that taking a lenient view on the application preferred by the petitioner , it was permitted to deposit the dead rent and penalty in instalments. It is contended on behalf of the respondent that after the expiry of the period of mining lease and refusal of the renewal for the reasons stated in order dated 24.7.06, the petitioner simply cannot claim possession of the leased area. The respondents have also denied entitlement of the petitioner for extension of duration of mining lease for the period the petitioner remained out of possession on account of cancellation of the mining lease and the respondent taking possession in pursuance thereof on 18.7.01.

It is contended by the learned counsel appearing on behalf of the petitioner that the order of cancellation of mining

lease dated 10.7.01 having been set aside by the revisional authority , the respondents were under an obligation to pass a fresh order after giving an opportunity of hearing to the petitioner. Learned counsel urged that admittedly, the petitioner did not remain in possession of the mining area after 18.7.01, therefore, the respondent cannot claim any rent for the period subsequent thereto, notwithstanding the directions of the revisional authority to pay the arrear of rent, assuming that the petitioner remained in possession of the mining area even after cancellation of the mining lease. The learned counsel urged that in view of the setting aside of the order of cancellation of lease dated 10.7.01 by the revisional authority vide order dated 2.4.04, the petitioner is entitled for the extension of period of the lease equal to the period it did not remain in physical possession of the leased area. In this regard, the learned counsel relied upon a decision of this Court in S.B.C.Writ Petition No. 4647/98 "Jai Singh Shekhawat vs. State of Rajasthan", decided on 2nd April, 1999(Annex.13). It is stated that a Special Appeal No.657/99 preferred by the State Government against the aforesaid judgment dated 2nd April,99 has also been dismissed by the Division Bench vide order dated 1.9.99(Annex.14)and the Special Leave Petition preferred by the State Government before the Hon'ble Supreme Court against the order dated 1.9.99 passed by the Division Bench of this Court also stands rejected

vide order dated 10.3.2000(Annexure 15). The learned counsel urged that the respondents have seriously erred in refusing the renewal of lease vide impugned order dated 24.7.06 in perfunctory manner by over reaching the process of Court.Learned counsel submits that the petitioner has already deposited two instalments in terms of order dated 30.11.05 (Annex.10) and it is ready to deposit the remaining amount if the mining lease is restored and possession of the leased area is handed over to it.

Per contra, the learned counsel appearing on behalf of the respondents has contended that the order passed by the revisional authority was a conditional order and the petitioner was under an obligation to clear the entire arrear of rent . Since, the petitioner has failed to deposit the arrear of rent in terms of the directions issued by the revisional authority even after repeated notices being issued and indulgence being granted to make the payment in instalments , therefore, it cannot claim extension of the lease period and for the reasons set out in the order dated 24.7.06(Annexure 19) passed by the respondent no. 2 ,the renewal of the lease has rightly been refused.

I have considered the rival submissions of the learned counsels appearing on behalf of the parties and have also perused the record.

Admittedly, the petitioner was granted the mining lease for

Ball clay, red occur and yellow occur in respect of the land ad measuring 129.50 hacters near village Jaisinghdesar, district Bikaner for a period of 20 years commencing from 11.10.85. A demand for Rs.1,22,866/- was created against the petitioner by the Mining Engineer , Bikaner and vide communication dated 20.3.01(Annex.R/14), while giving last opportunity the petitioner was directed to raise his objections, if any, against the demand by 22.3.01. The default in payment of the arrear towards the rent, royalty, penalty etc. determined as above, resulted in cancellation of the lease as aforesaid. It is not in dispute that in pursuance of the cancellation of lease , the possession of the leased area was taken by the Mining Department from the petitioner on 18.7.01. Aggrieved by order dated 10.7.01 cancelling the lease, the petitioner preferred the revision petition u/s 30 of MMDR Act, which was allowed by the revisional authority vide order dated 2.4.04(Annex.8) and the State Government was directed to pass an appropriate order after giving an opportunity of hearing to the petitioner in accordance with law. From the perusal of the order, it appears that the petitioner was directed to clear all outstanding dues of the State Government, presuming that the possession of the area had remained with the petitioner . The aforesaid directions issued by the revisional authority obviously relate to the period prior to 18.7.01 inasmuch as, in the said order itself, it is

recorded that the petitioner had possession over the leased area upto 18.7.01 Therefore, on the strength of the said order dated 2.4.04, the question of respondents claiming the dead rent etc. for the period subsequent to 18.7.01 from the petitioner does not arise.

In terms of the order dated 2.4.04 , the State Government was required to pass an appropriate order after giving an opportunity of hearing to the petitioner at the earliest but not less than 60 days from the date of issue of the order. It is not in dispute that in pursuance of the said order, no fresh order has been passed by the State Government after giving an opportunity of hearing to the petitioner regarding the proposed cancellation of lease. Thus, in view of setting aside of the order dated 10.7.01 cancelling the lease, by the revisional authority , the mining lease granted in favour of the petitioner remained operative.

It is not in dispute that possession of the leased area did not remain with the petitioner after 18.7.01 and for this reason, it could not operate the mine thereafter. It is to be noticed that in terms of the MMDR Act, the holder of the mining lease is required to pay to the State Government every year “dead rent” at such rate as may be specified for time being in the Third Schedule to the MMDR Act, for all areas included in instrument of lease. However, when the holder of the mining lease becomes

liable to pay royalty for any mineral removed or consumed from the leased area , it shall be liable to pay royalty or dead rent in respect of that area whichever is greater. But, if the mining lease holder is deprived from operating the mines on account of the termination of the lease then, even if the lease is later restored, such mining lease holder cannot be compelled to pay dead rent , interest, and penalty by the State Government upto the period the lease remained terminated. Therefore, the respondents are not entitled to recover the dead rent or any other amount from the petitioner for the period it was not in physical possession over the leased area.

The mining lease granted to the petitioner was for a period of 20 years i.e. from 11.10.85 to 10.10.05. However, on account of cancellation of the lease and taking over of the possession, the petitioner has been deprived from operating the mines for the period 18.7.01 to 10.10.05. Since, order dated 10.7.01 cancelling the mining lease has been set aside by the revisional authority vide order dated 2.4.04 and even thereafter, the petitioner has not been handed over the possession of the leased area by the respondents, therefore, the said intervening period cannot be counted in the lease period and the petitioner is entitled for the extension of the lease period accordingly. This aspect of the matter stands covered the decision of this Court dated 2nd April,1999 in Jai Singh's case(supra).

Regarding the contention of the respondents that the order passed by the revisional authority was conditional and the petitioner having failed to discharge the demand, the renewal has rightly been rejected and the petitioner is not entitled for any relief , it is to be noticed that in the first instance the lease existing in favour of the petitioner was cancelled by the respondents on account of arrear of rent and penalty quantified at Rs.1,22,866/-. Admittedly, the said amount has already been deposited by the petitioner under protest vide receipt dated 11.9.01(Annex.20). However, the respondents raised a further demand of Rs.1,38,053/- plus interest vide communication dated 6.4.05(Annex.R/3). Thereafter, the amount of the arrear of rent, royalty, interest and penalty was quantified at Rs. 2,24,099/- . The petitioner agreed to pay the amount in 12 equal monthly instalments vide communication dated 3.1.06 and requested to permit it to operate the mine. It is also not in dispute that the petitioner has paid two instalments in pursuance thereof but, the possession of the leased area was not handed over to it. The respondents having permitted the petitioner to deposit the due amount in instalments could not have withhold the possession of the leased area. For the parity of the reasons, the respondents were not justified in refusing the renewal of the mining lease. Moreover, the petitioner being entitled for extension of the lease period as aforesaid, the question of

renewal of the mining lease at this stage does not arise. Therefore, the order impugned passed by the respondents refusing the renewal is not sustainable in the eye of law.

In the result, the writ petition succeeds, it is hereby allowed. The impugned order dated 24.7.06 (Annex.20) is quashed and set aside. The petitioner shall deposit the remaining amount in terms of order dated 30.11.05(Annex.10) within a period of two weeks from the date of this order. On depositing the amount as aforesaid, the respondents shall hand over the possession of the leased area to the petitioner forthwith. The respondents are restrained from recovering the dead rent or any other amount from the petitioner for the period w.e.f. 18th July, 01 till the date the possession is handed over to the petitioner. The period of the mining lease granted in favour of the petitioner shall stand extended equal to the period the petitioner did not remain in possession of the leased area on account of cancellation of the lease and taking over of the possession thereof i.e. from 18.7.01 to 10.10.05. The extended period shall commence from the date the possession of the leased area is handed over to the petitioner. No order as to costs.

(SANGEET LODHA),J,